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**Cc:** Eudora Powell[epowell@earthjustice.org]  
**From:** Janette Brimmer  
**Sent:** Mon 10/24/2016 8:29:29 PM  
**Subject:** RE: Counsel: proposed draft joint case management document...  
DENVER-#554949-v4-Upper Mo draft redline of joint submission on schedule 10 24 AFTERNOON DRAFT.docx

Okay, once more with feeling. Attached is what I hope to be the joint case statement that we can file this afternoon with the court.

Please note:

Includes TWO charts---one for the joint proposal of EPA/plaintiffs (state?) and the second one for the joint proposal by defendant-intervenors, provided by Cathy earlier today. That chart also contains the changes noted in Cathy's email below.

This version also includes all of the changes noted by Paul Drucker but for one---I have total words counts for BOTH proposals so that the court can see how much briefing total each proposal provides.

I also moved the paragraph stating that all parties agree the State of Montana may have its own separate brief up but did not otherwise change it.

Finally, there is yellow highlight in paragraph 5 showing a change I made to clearly and in summary fashion state that some parties propose increases in words limits for some briefs.

Please let me know IMMEDIATELY if this meets with your approval and I have authority to sign for you. If I don't hear from all of the parties the next hour I will have to file it with the court and I will note who has agree and who we are still waiting to hear from and then those persons can advise the court of their position.

Thank you.

Janette Brimmer

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**From:** Cathy Laughner [mailto:cathyl@bkbh.com]

**Sent:** Monday, October 24, 2016 1:02 PM

**To:** Janette Brimmer; 'Pinkston, Daniel (ENRD)'; Katherine O'Brien; 'Albert F. Ettinger (ettinger.albert@gmail.com)'; Stephanie Tsosie; 'Schroer, Lee'; 'Perkins, Erin'; 'Laidlaw, Tina'; 'Zomer, Jessica'; 'Mark Stermitz'; 'Jeff J. Oven'; 'kmoser2@mt.gov'; 'Bond, Sarah (SBond@mt.gov)'; 'mwarhank@jmgm.com'; 'fredric.andes@btlaw.com'; 'pdrucker@btlaw.com'; 'jfortney@btlaw.com'; Chad Adams; Jennifer Chavez

**Subject:** RE: Counsel: proposed draft joint case management document...

Janette, One correction to the League's chart in the attachment to the email I sent a few minutes ago. P would also be held to a 3,250 word Reply, not 15,000 words.

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**From:** Cathy Laughner  
**Sent:** Monday, October 24, 2016 1:40 PM  
**To:** 'Janette Brimmer'; 'Pinkston, Daniel (ENRD)'; Katherine O'Brien; 'Albert F. Ettinger (ettinger.albert@gmail.com)'; Stephanie Tsosie; Schroer, Lee; Perkins, Erin; Laidlaw, Tina; Zomer, Jessica; 'Mark Stermitz'; Jeff J. Oven; 'kmoser2@mt.gov'; 'Bond, Sarah (SBond@mt.gov)'; 'mwarhank@jmgm.com'; 'fredric.andes@btlaw.com'; 'pdrucker@btlaw.com'; 'jfortney@btlaw.com'; Chad Adams; Jennifer Chavez  
**Subject:** RE: Counsel: proposed draft joint case management document...

Janette and I have talked, and the Cities suggest adding our own chart to show non-consolidated briefing. See attached. We also ask for 30 days to respond/reply rather than 20 days, and do not agree with P's word count.

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**From:** Janette Brimmer [<mailto:jbrimmer@earthjustice.org>]

**Sent:** Monday, October 24, 2016 12:49 PM

**To:** Cathy Laughner; 'Pinkston, Daniel (ENRD)'; Katherine O'Brien; 'Albert F. Ettinger ([ettinger.albert@gmail.com](mailto:ettinger.albert@gmail.com))'; Stephanie Tsosie; Schroer, Lee; Perkins, Erin; Laidlaw, Tina; Zomer, Jessica; 'Mark Stermitz'; Jeff J. Oven; 'kmoser2@mt.gov'; Bond, Sarah ([SBond@mt.gov](mailto:SBond@mt.gov)); 'mwarhank@jmgm.com'; 'fredric.andes@btlaw.com'; 'pdrucker@btlaw.com'; 'jfortney@btlaw.com'; Chad Adams; Jennifer Chavez

**Subject:** RE: Counsel: proposed draft joint case management document...

Okay, I have looked at this. I disagree with the changes to the chart. EPA and plaintiffs have agreed on word counts. Where others disagree with that, we have plainly set that forth. We get to set forth what we propose and have agree to. Perhaps the Cities misunderstood the chart—it plainly provides that it is agree to by plaintiffs EPA and the state (should the state agree as Dan indicated—if not, we can make that change.) Otherwise the court is unclear what we are proposing so no, the Defendant intervenors do not get to dictate what the EPA nad plaintiff say to the court about their agreed proposal just as we will not dictate to the court what to say about Defendant-Intervenor's proposal.

So, please, again, respond to the version that I sent that redlines Dan's suggestions and please do not change what other's propose. We will make clear that the chart is only proposed by plaintiffs and EPA (and the state if the state does in fact agree.)

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**From:** Cathy Laughner [<mailto:cathyl@bkbh.com>]

**Sent:** Monday, October 24, 2016 11:41 AM

**To:** 'Pinkston, Daniel (ENRD)'; Janette Brimmer; Katherine O'Brien; 'Albert F. Ettinger ([ettinger.albert@gmail.com](mailto:ettinger.albert@gmail.com))'; Stephanie Tsosie; Schroer, Lee; Perkins, Erin; Laidlaw, Tina; Zomer, Jessica; 'Mark Stermitz'; Jeff J. Oven; 'kmoser2@mt.gov'; 'Bond, Sarah ([SBond@mt.gov](mailto:SBond@mt.gov))'; 'mwarhank@jmgm.com'; 'fredric.andes@btlaw.com'; 'pdrucker@btlaw.com'; 'jfortney@btlaw.com'; Chad Adams; Jennifer Chavez

**Subject:** RE: Counsel: proposed draft joint case management document...

The League's comments are attached. I would ask that the chart be modified to only include agreed upon word counts, as it could be misread/misleading to include unagreed upon terms. Thanks.

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**Sent:** Monday, October 24, 2016 12:16 PM

**To:** Janette Brimmer; Katherine O'Brien; 'Albert F. Ettinger ([ettinger.albert@gmail.com](mailto:ettinger.albert@gmail.com))'; Stephanie Tsosie; Schroer, Lee; Perkins, Erin; Laidlaw, Tina; Zomer, Jessica; Cathy Laughner; 'Mark Stermitz'; Jeff J. Oven; 'kmoser2@mt.gov'; 'Bond, Sarah ([SBond@mt.gov](mailto:SBond@mt.gov))'; 'mwarhank@jmgm.com'; 'fredric.andes@btlaw.com'; 'pdrucker@btlaw.com'; 'jfortney@btlaw.com'; Chad Adams; Jennifer Chavez

**Subject:** Counsel: proposed draft joint case management document...

Attached is my draft joint case management document. As you will see, there are a few revisions from the various drafts I received from other parties. Please read this version carefully to be sure you see all changes I made. The structure of this document is to present the timeline and word count plaintiff and EPA agree to. I represented that Montana agreed as well – if not, let me know and we can change that. It then includes a separate statement from intervenors on separate briefing and word counts. I deleted the footnote plaintiff inserted about the alignment

of parties in the interests of getting something to the court in a form we could agree on; if Treasure State, League, and/or NACWA file something on separate briefing with the court, plaintiff can make its counter arguments (or if plaintiff just wants to file something on that topic).

I took out the requirement that EPA file a hard copy of the AR with the court by 12/2 – with the idea that we would find out how the court wants to handle that filing. I also made it clear that EPA and intervenors were reserving their right to oppose any motions to amend the complaint.

Please review at your earliest convenience and let me know what you think. I am waiting for a final sign-off on this from Region 8, but let's use this draft. Sorry for the delay in getting this to everyone. This document is intended to preserve everyone's positions, so please err on the side of us getting something to the court ASAP. Thank to everyone for their help on this.

Dan Pinkston

303-844-1804